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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re SANTIAGO R. et al., Persons
Coming Under the Juvenile Court
Law.

B292308
(Los Angeles County
Super. Ct. No. DK02509E-I)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent;

DESTINEE R. et al.,

Respondents,

v.

REGINA D. et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County. Steff R. Padilla, Juvenile Court Referee. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant Regina D.

Johanna R. Shargel, under appointment by the Court of Appeal, for Defendant and Appellant Santiago R.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and Respondent.

Marissa Coffey, under appointment by the Court of Appeal, for Minors Destinee R., Serenia R., Maribel R., and Lisvet R.

Aida Aslanian, under appointment by the Court of Appeal, for Minors Santiago R., Jr., Juliana R., Julissa R., Jacob R., and Anthony R.

Santiago R. (father) and Regina D. (mother) challenge the juvenile court's order terminating their parental rights to five of their nine children: Santiago R., Jr. (Mikey, born Apr. 2008), Juliana R. (Juliana, born Nov. 2009), Julissa R. (Julissa, born Sept. 2010), Jacob R. (Jacob, born Oct. 2011), and Anthony R. (Anthony, born Nov. 2013; Mikey, Juliana, Julissa, Jacob, and Anthony are collectively referred to as the five younger siblings or children). The parents' four older children, Destinee R. (Destinee, born Dec. 2003), Serenia R. (Serenia, born Nov. 2004),

Maribel R. (Maribel, born Oct. 2006), and Lisvet R. (Lisvet, born Sept. 2006; these four children are referred to collectively as the four older siblings), also challenge the order terminating parental rights. All appellants argue that the juvenile court erred when it denied mother's request to have four of the five younger children testify at the Welfare and Institutions Code section 366.26¹ hearing to select and implement a permanent plan.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Family

At the onset of these proceedings, this family consisted of mother, father, and the nine children.

Section 300 Petition; Detention

On November 27, 2013, the Department of Children and Family Services (DCFS) filed a petition pursuant to section 300, subdivisions (a) and (b), on behalf of the nine children. The petition alleged that mother and father had a history of engaging in violent altercations in the children's presence, father had been convicted of inflicting corporal injury on a spouse and violation of a court order to prevent domestic violence (and was currently incarcerated), and mother failed to protect the children by allowing father to frequent the children's home and have unlimited access to the children in violation of restraining orders.

At the detention hearing, the juvenile court ordered the children detained from father and released them to the care of mother.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

First Amended Section 300 Petition; Adjudication Hearing

After learning about father's history of substance abuse, on December 18, 2013, DCFS filed a first amended section 300 petition, adding the allegation under subdivision (b) that father had a history of substance abuse and that he had several prior arrests for possession of drugs and for being under the influence of a controlled substance. The amended petition also alleged that mother knew or reasonably should have known of father's substance abuse and failed to protect the children.

On December 27, 2013, the juvenile court sustained the petition as amended and declared the children dependents of the court pursuant to section 300, subdivisions (a) and (b). The juvenile court ordered that the children be placed in mother's home. It granted father monitored visits twice a month with the four older children while he was incarcerated, and two or three times a week once released from incarceration. Mother was ordered not to be present during father's visits.

Status Review Report (June 27, 2014)

On February 10, 2014, DCFS received a referral alleging that mother had left her three small children alone in a car at around 7:00 p.m. in an unlighted area of a parking lot while she and the other six children went into a Wal-Mart store. Another shopper at the store called the police, and when the police officer approached the car, he observed that the oldest child left in the car was seven-year-old Lisvet. She was in the car with two-year-old Jacob and three-month-old Anthony. The police officer reported that Lisvet was very emotional and began to cry. She provided the police officer with mother's cellular telephone number. Mother came outside and informed the police officer

that she went into the store to buy formula, but she and the other children “got caught up looking at movies.”

During a team decision-making meeting on March 5, 2014, mother took full responsibility for her actions and ensured the social workers that she would better protect the children.

Father was released from incarceration on January 24, 2014, and rearrested on February 13, 2014, for a probation violation. He was released again from incarceration on May 12, 2014. Although he made several attempts to live at a sober living house, he was repeatedly discharged for breaking curfew and testing positive for alcohol. On June 30, 2014, father was again incarcerated.

Meanwhile, mother informed the social worker that she had not had any contact with father since he was released from incarceration. She indicated that the children were her priority, and represented that she would not jeopardize her children’s placement by having father around her or the children.

Status Review Report (Dec. 19, 2014)

On December 10, 2014, father showed up at mother’s home and attempted to speak to mother. He became upset with mother in the front yard and hit her in the face. Mother ran into the house, but dropped her cellular telephone in the yard. Destinee went outside to get mother’s telephone, and father pulled her ear and punched the back of her head.

While one social worker (Esther Crespo (Crespo)) was meeting with mother regarding the violent incident with father, another social worker (Kristin DeHart (DeHart)) contacted the principal of the children’s school, who reported that mother continually brought the children to school 45 minutes to one hour late each morning. The principal also informed the social worker

that she had seen father at school with mother on December 8, 2014, when mother picked the children up from school. Father also had attended the Halloween parade at school on October 31, 2014.

The school principal stated that she and the school staff had noticed changes in the children beginning in October 2014. Serenia had become very defiant and was terminated from her after-school program. The four older siblings denied that father came to school or was with mother when she picked them up. They said that the man was their uncle. Mikey and Juliana reported that it was their father who had come to school and that he was back at home.

DeHart shared with Crespo what she had learned from the school principal. Crespo, who was still meeting with mother, then noticed that mother appeared to have hickeys all over her neck. When the social worker asked mother about them, she said that she had met up with father at a motel a while ago and that the children were not with them. Mother believed that she was pregnant again—with her tenth child.

Section 342 Petition; Detention Report; Adjudication Hearing (Dec. 24, 2014)

On December 17, 2014, the social worker filed a warrant for the removal of the children from mother's care. The juvenile court granted the warrant, and on December 19, 2014, the social worker removed the children and placed them in foster care.

On December 24, 2014, DCFS filed a section 342 subsequent petition on behalf of the children. This petition alleged that on December 10, 2014, father struck mother's head and repeatedly struck mother's face in the children's presence and at their home; on several occasions in 2014, mother and

father violated a criminal protective order; mother failed to comply with the juvenile court's orders that father not visit the family home and that mother not be present during father's visits; mother failed to protect the children by allowing father to have frequent contact with them; and on December 10, 2014, father physically abused Destinee.

The juvenile court ordered the children detained from mother and granted her and father monitored visits. DCFS placed Destinee and Mikey together with their maternal adult cousin; Serenia, Maribel, and Lisvet together in the foster home of Maria A.; Juliana and Julissa together in the foster home of Paula M.; and Jacob and Anthony together in the foster home of Seandra H.

Status Review Report (Nov. 13, 2015)

DCFS reported that the only issue prohibiting the reunification of mother with the children was the fact that mother did not have stable housing. Father was incarcerated again, with a prison term of five years.

Mother was involved in a new relationship and reported that her boyfriend's (Honasis A.) permanent residence was in Texas.

The children had had several foster home replacements since their detention from mother. The replacements were the result of the children's negative behavior, especially that of Destinee, Serenia, Maribel, and Lisvet (the four older siblings).

Mother visited Juliana, Julissa, Jacob, and Anthony twice a week at the foster family agency. The foster family agency staff were concerned that mother did not supervise the children properly while they ate and played. For example, on one occasions, mother did not respond to an incident when Anthony

began to choke. Anthony also received two bruises to his head while playing. Mother relied on the older children to help her with parenting tasks for the younger children, and she frequently spent time on her telephone, which distracted her from the children and resulted in a lack of appropriate supervision.

DCFS held a team decision-making meeting on September 13, 2015. The foster family agency social worker reported that since the meeting, mother had shown improvement in food safety and in the time she spent on the telephone, “but her ability to be present and engaged varies greatly from visit to visit.” The foster family agency social worker stated that mother “continues to present with an overall flat affect and exhibits ongoing limitations in her ability to emotionally connect with her children. [Mother] does not greet the children at the beginning of visits and does not say goodbye when the[y] end. [Mother] also made several inappropriate/mean comments toward her children, including calling them[] ‘brats’ when they do not listen to her and telling Julissa, ‘I don’t like it when you wear your hair down.’ Overall, [mother] has made some small improvements during visits, but has many areas of needed improvement to continue working on during the next quarter.”

The children enjoyed visiting with mother.

Mother visited Destinee, Mikey, Maribel, and Lisvet once a week. Destinee and Mikey looked forward to the visits and appeared excited to see mother. Mother’s visits with these children, and the children’s visits with one another, went well. Mother visited Maribel and Lisvet a second time weekly at a mall; again, the children seemed excited to see mother.

Mother visited Serenia weekly; she too seemed excited to see mother and enjoyed their visits. Destinee, Serenia, Lisvet,

Juliana, Julissa, and Jacob reported that they missed mother and living with all of their siblings.

Last Minute Information for the Court (Jan. 29, 2016)

On November 17, 2015, in accordance with the juvenile court's permission, DCFS liberalized mother's visits to unmonitored with all of her children. When the social worker met with mother to explain that if she wanted to take the children off site, she needed proof of a valid driver's license, car insurance, and car seats. Mother asked to borrow the foster family agency's car seats, but the social worker explained that they could not loan them to mother. Mother then became angry and began to punch herself in the head. Mother told the children, who were all watching, "[S]ee she just doesn't want me to visit with you kids." The social worker informed the children that that was not true, and told mother that the conversation was not appropriate in front of the children. Mother calmed down, and the social worker allowed her to continue her visit at the foster family agency office.

On November 20, 2015, the DCFS social worker met with mother and stated that her behavior at the prior visit was not acceptable. Mother stated that she was frustrated because she could not take the children out of the foster family agency office without a valid driver's license and car seats. The social worker also informed mother that her boyfriend would need to submit to a live scan before he could visit the children.

On November 30, 2015, the foster family agency informed the DCFS social worker that mother was returning the children from the visits 20 to 40 minutes late each time. The foster family agency informed mother that after 30 minutes, they would contact the police. Mother responded: "I don't care, [they're] my

kids and we were visiting with family.” Juliana and Julissa reported that they rode in the car without seatbelts.

On December 1, 2015, mother returned Juliana, Julissa, Jacob, and Anthony back from the visit 25 minutes late. Consequently, the social worker limited mother’s visits to the DCFS office.

On December 16, 2015, mother was scheduled to have a visit with Anthony at the DCFS office from 1:30 p.m. to 4:30 p.m. At approximately 4:45 p.m., the social worker received a telephone call from the DCFS receptionist stating that Anthony’s foster mother was there to pick him up, but mother and Anthony were not in the lobby. The social worker called mother and left her a voicemail message, advising her that she did not have permission to take Anthony out of the DCFS office and needed to return with him. The social worker then found the foster mother in the parking lot with Anthony; the foster mother reported that mother had just dropped the child off without saying anything and left.

On December 23 2015, the social worker met with mother to discuss her concerns about mother’s disregard of the visitation guidelines. Mother reported that she did not have enough time each visit to do what they wanted to do. The social worker explained that if mother acted responsibly during her visits, DCFS would gradually increase the hours of her visitation. The social worker then informed mother that the live scan results for her boyfriend showed an extensive criminal history; as a result, he was not allowed to visit the children during mother’s visits. Mother’s boyfriend also could not speak to the children over the telephone. Mother indicated that she understood.

On January 4, 2016, mother had an unmonitored visit with Juliana, Julissa, Jacob, and Anthony. After the visit, Julissa and Juliana told their foster mother that there was a man in the car with them during the visit, but they could not say who it was because they were afraid that mother would be angry with them. Mother had told the children not to tell the foster mother or the social workers. The foster mother asked the girls if it was mother's boyfriend, and the girls asked, "[H]ow did you know?" Juliana and Julissa begged their foster mother not to tell mother. They also reported that they did not wear seatbelts in the car.

On January 5, 2016, Juliana, Julissa, Jacob, and Anthony had another unmonitored visit with mother and, upon their return to the foster home, Juliana told the foster mother, "[M]y mom's boyfriend was in the car again." Julissa got upset with Juliana for telling the foster mother and reported that she did not want mother to know they had told anyone. The girls feared that mother would be angry and take back their gifts to the store if they told anyone. Again, the girls did not wear seatbelts in the car.

On January 7, 2016, the social worker informed mother that her visits were reverting back to monitored because she had allowed her boyfriend to be present during her visits with the children. Mother responded: "Just because Julie and Julissa say [my boyfriend] is around he's not, kids make-up stuff and they lie."

That same day, the social worker received a telephone call from a maternal relative who reported that mother was pregnant.

On January 12, 2016, DCFS replaced Maribel and Lisvet into new foster homes. These foster parents were related to each other and lived in the same community; therefore, the girls would

have weekly visits with each other. During the car ride to the new homes, the girls informed the social worker that mother's boyfriend had attended their unmonitored visits with mother.

On January 26, 2016, Destinee and Mikey's foster father reported that on two occasions when he picked the children up from the visits with mother, there was a man in the car with mother. The children told him that it was their uncle. The social worker interviewed Mikey about the man in mother's car, and he stated that the man was mother's friend. Mikey continued: "My mom said he is our new dad. Because my other dad is in jail for hitting us."

Status Review Report (Feb. 24, 2016)

On February 7, 2016, mother had a visit with all of the children. During the visit, mother's boyfriend sat in the car and watched the visit. Furthermore, during the visit, mother was on the telephone and discussed the case with a foster parent. Mother also took Anthony to the foster father on two occasions for him to change the child's diaper.

DCFS described its efforts to facilitate ongoing sibling visits for the nine children. Mother had monitored visits with Juliana and Julissa on Mondays, with Destinee and Mikey on Wednesdays, and with Jacob on Fridays. On Saturdays, mother had two-hour visits with Serenia, Maribel, Lisvet, Jacob, and Anthony at a McDonald's restaurant. The foster parents for Destinee, Mikey, Juliana, and Julissa agreed to have sibling visits with mother on the first Saturday of each month in addition to the weekly visits. Also, the foster parents for Maribel, Lisvet, and Serenia agreed to have day visits within the foster homes because they lived near one another. Finally, the four older siblings had monitored telephone calls on Sundays.

Last Minute Information for the Court (June 7, 2016)

On March 10, 2016, Anthony's foster parents reported that during mother's visits with the child, she was always looking at her telephone. The last time Anthony had a tantrum, mother gave the child to the foster parent and did not attempt to comfort him. The foster mother reported that mother did not interact with Anthony, and the older siblings attended to him.

On April 8, 2016, Jacob's foster mother reported that mother did not pay much attention to Jacob during the visits. During mother's visits with Jacob and his siblings, mother paid more attention to the older girls.

On May 25, 2016, the foster family agency social worker reported that Juliana and Julissa had cried at the end of the last three or four visits with mother, but mother did not provide the children with much comfort.

The social worker reported that mother was pregnant and due in November 2016. Jacob's foster mother informed the social worker that the child's therapist had recommended that his visits with mother be terminated "because of the emotional trauma it [was] causing Jacob."

Attached to the report was a letter from Jacob's therapist. It stated: "Although Jacob's behaviors are somewhat manageable at this time due to the excellent relationship he has with his foster mom [Mrs. F.], his progress in treatment was delayed and undermined by his biological parents." The therapist opined that mother's lack of interest in the children during the visits had a negative impact on Jacob's emotional well-being. When he returned to the foster home after visits, "Jacob would act out in confusion, inquire why his 'mom would not look at him or speak to him,' and would respond with temper tantrums, defiance,

depressed mood, withdrawn behaviors, and episodes of enuresis and encopresis. Jacob would generally slip into a sad mood after his visits which would last for days.” The therapist recommended that Jacob’s visits with mother be reduced to, at most, one visit each week, for a maximum of two hours. The therapist also stated: “I am also recommending that the court give consideration to the probability of discontinuing reunification efforts as constant contact with the biological mother has shown to negatively impact Jacob’s emotional wellbeing and worsen Jacob’s symptoms.”

The children continued to meet the first Saturday of the month for two-hour sibling visits along with mother. Mother had monitored visits with Juliana and Julissa on Tuesdays, with Destinee, Mikey, and Jacob on Wednesdays, with Anthony on Thursdays, and with Serenia, Maribel, Lisvet, and Jacob on Saturdays.

Finally, the social worker reported transitional replacement had begun for Juliana, Julissa, and Mikey into the same home as Jacob, the foster home of Mr. and Mrs. F., and transitional replacement had begun for Destinee into the same foster home as Maribel.

12-month Review Hearing (June 7, 2016)

The juvenile court ordered DCFS to continue providing family reunification services. It reduced mother’s visits with Jacob to one time each week for two to three hours per visit.

Status Review Report (June 20, 2016)

On June 10, 2016, replacement of Destinee, Mikey, Juliana, and Julissa was completed. Mother had visits with Destinee, Serenia, Lisvet, Mikey, Juliana, Julissa, and Jacob on Wednesdays, and with Anthony on Thursdays. Mother and all

nine children continued to have visits at the park on the first Saturday of every month.

On June 17, 2016, regarding mother's visits with Anthony, the foster family agency social worker stated: "A primary concern by this agency . . . is the lack of focused and direct engagement with Anthony [by mother]. Although the visits are cooperative and without incident, no parenting skills are demonstrated that would suggest and assure appropriate safe care without the presence of professional intervention."

Status Review Report (Oct. 13, 2016)

On July 12, 2016 mother admitted that she had been involved in a domestic violence incident with her boyfriend. On July 20, 2016, the social worker learned that mother and her boyfriend continued to communicate through social media. Mother's therapist reported that mother had not shared any information regarding the domestic violence incident with her.

DCFS reported that mother would discuss the dependency case with the children during their visits, despite DCFS's repeated requests not to discuss case matters with them. Mother was upset that the monitors could hear her conversations, and she and Destinee would whisper to each other during the visits. Mother also made inappropriate comments to the children about their foster parents. The social worker reported: "Since . . . mother has been discussing the case with the older children[, they] have now been questioning the younger children during their sibling visits about being adopted and not to call their foster parents mommy and daddy."

Mother requested to be present at Mikey, Juliana, Julissa, and Jacob's first day of school. On August 13, 2016, mother waited at school until she found Mikey with Mrs. F.'s adult sister,

Vicki. Mrs. F. had taken the other children to their classrooms. Vicki allowed mother to take a picture with Mikey, but then stated that they should have Mrs. F. present. Mother became upset and, in an aggressive tone, stated that she could see her children when she wanted and that she did not have to wait for Mrs. F. Mother then confronted Mikey and told him that he was being brainwashed. Mother's tone was aggressive, and Mikey got scared and hid behind Vicki. After school, Mikey told his foster parents he was upset about what mother had told him. He wrote a letter regarding what had occurred, stating: "My mommy came. She was yelling at me and cus[s]ing at me it scared me. I [cried] aunti[e] kiki was [there] she told my mom to go away."

The social worker interviewed Mikey about the incident. Mikey stated: "Yea, she [] grabbed me. She was cussing at me. I was crying. I was scared. I don't want to see her there [] anymore." At this point, Mikey reported that he no longer wished to have the same name as his father and asked to be called "Mikey or Michael."

On August 15, 2016, the social worker received reports that during the mother and siblings' visit, mother called Mikey "a liar" in the presence of the foster parents and his siblings. Mr. and Mrs. F. asked mother to stop directing comments towards Mikey, but mother did not listen; the foster parents terminated the visit. Mother yelled at Mr. and Mrs. F. that the only reason they wanted to adopt the children was because they did not have children of their own. Also, mother yelled that they were brainwashing the children. Juliana and Julissa were crying on the floor and did not want to leave the terminated visit. Afterwards, the social worker advised mother that her monitored visits had been modified to occur at the DCFS office.

Destinee's foster mother informed the social worker that mother had made comments to Destinee during their telephone conversations that Mikey's foster parents only wanted her siblings because they could not have children of their own. On August 20, 2016, Lisvet told the social worker: "[Mother] told [Mr. and Mrs. F.] off because they want to keep the kids. She can't have kids of her own." Lisvet continued: "Oh, my mom yells at all the foster parents."

On September 22, 2016, the social worker met with Mikey and Julissa prior to their visit with mother. Mikey told the social worker that he did not want to attend the visit "[b]ecause I hate my visits. I don't like my visits. [Mother] stares at me mean (showing the [social worker] an angry face)." Mikey said that mother made him feel bad when he saw her. Mikey refused to stay at the visit for even 10 minutes. Julissa told the social worker: "I don't want to be here today. My mom is mean. She says she is giving my Frozen toys to my niece." Mikey and Julissa were excused from the visit; Juliana and Jacob remained. *Last Minute Information for the Court (Nov. 21, 2016)*

On November 2, 2016, Juliana and Julissa reported to the foster family agency social worker that during their visits with mother, when mother took them to the restroom by themselves, she would tell them to behave poorly in the foster home, not to call Mrs. F. "mom," and that the more mad Mrs. F. would get at them, the sooner they could return to her care.

On November 7, 2016, the foster family agency social worker reported that on one of the sibling visits, two of the older sisters threatened Mikey and Julissa, stating that they would kill them if they did not go to the visits with mother. Destinee told Julissa that she had to tell the social worker she wanted to visit

with mother and wanted to return to her care or Destinee would “stab her with a pocket knife until she bled to death.” Lisvet told Mikey that if he did not visit mother and say that he wanted to return to her care, she would “cut him in the throat.” Juliana reported that Destinee had told her to do everything possible to make Mikey and Julissa attend visits with mother or she would kill her. Juliana, Julissa, and Mikey said that the girls made these threats while they were all playing on the slide at the park. Also, throughout the visit, the older girls called their brother “Santiago,” and when Mr. and Mrs. F. redirected them to call him “Mikey,” they ignored the foster parents; Serenia stated that she would only call her brother the name that mother had given him. *Interim Review Report and Last Minute Information for the Court (Jan. 19, 2017)*

In November 2016, mother gave birth to Aristotle A.²

On November 22, 2016, Serenia was replaced into the same foster home as Lisvet.

Meanwhile, mother continued to have monitored visits with the children. She visited Destinee, Serenia, Maribel, and Lisvet together. The children’s foster parents monitored the visits and reported that the children appeared comfortable around mother. Destinee and mother would speak to each other in secret codes. Destinee’s foster mother said that it was difficult to direct or have control of Destinee because she was very protective of mother and would do anything to please her.

Mother also continued to have monitored visits with the five younger children at the DCFS office. Mikey and Jacob

² Aristotle, who has a different father than the nine children that are the subjects of this appeal, is not a subject of this appeal.

refused to visit mother and would walk away when she approached them in the office lobby. Juliana would waver in her desire to see mother, and Julissa consistently attended the visits.

In late 2016 or early 2017, father was released from prison and asked to see the children. All of the children except Serenia informed the social worker that they did not want to see father. Mikey, Juliana, Julissa, and Jacob agreed to speak with him on the telephone. After Mikey's first telephone call with father on December 15, 2016, Mikey had an outburst and began to slam doors and hit walls. He screamed that he did not want to go with father and that he remembered when father used to hit him. It took some time for Mikey to calm down. The other children appeared anxious as well.

On January 12, 2017, the five younger siblings stated that they did not want to visit mother. When the social worker asked why, they stated that they did not feel comfortable being around her. Mikey expressed that he "hates 'Regina'" and referred to mother by her first name. At the social worker's suggestion, Mikey and mother had a private conversation, during which time Mikey told mother: "I don't want to see you, because you screamed bad words to me at my first day of school. You also screamed at me all the time and would pinch me. You also allowed my dad [to] hit me [a] lot and did not do anything. I don't want you." Mikey then said that maybe, once in a while, he would visit mother, but he felt better telling her how he felt. Mother apologized to Mikey for what he went through and told him that she was changing. She said that she was his mother and would be there for him.

On January 18, 2017, the social worker received a letter from Mikey's therapist, advising that Mikey had been engaged in

self-harm, had difficulty controlling emotions, and would shut down. The therapist recounted one session where Mikey recoiled, hid behind a couch, and shook his head “no” when asked to talk to father. The therapist also described an instance when Mrs. F. called to ask for guidance because Mikey refused to climb out from under a table and was constantly hitting himself after a visit with mother. On another occasion, Mr. and Mrs. F. asked the therapist to go to the home to help Mikey calm down after he said goodbye to Mr. F., who left to participate in military training for a few weeks. During sessions, Mikey asked the therapist about the process of adoption and stated that he wanted to let the juvenile court know that he wanted to be adopted despite his fear of hurting mother.

January 19, 2017, Hearing

The juvenile court suspended contact between Mikey and father and ordered sibling visits to occur once a week.

Supplemental Report (Jan. 31, 2017)

On January 24, 2017, DCFS received a letter from Juliana and Julissa’s therapist. The therapist reported that Juliana had regressed and suffered enuresis two times in the week following the initial telephone call with father. During their session following that call, Juliana said that speaking to father made her “mad,” and she did not like speaking to him. Julissa also regressed after the telephone call with father. She suffered enuresis and got in trouble at school for hitting, pushing, and pulling the hair of three of her classmates. She did not want to participate in telephone calls with father.

The social worker reported that she was having trouble scheduling visits between the four older siblings and the five

younger siblings because the younger children had expressed that they did not want to visit the older children.

Status Review Report (Aug. 31, 2017)

On May 7, 2017, Mikey was placed on a hospital hold because he was a danger to himself and others. He was discharged on May 13, 2017, with a diagnosis of “major depressive disorder, severe, recurrent without psychotic features.”

On May 30, 2017, the social worker interviewed mother’s therapist. The therapist reported that mother was having difficulty understanding that the domestic violence had affected the children and impacted their safety. She believed that part of the reason why the children had been removed from her care was due to her housing situation.

On June 8, 2017, the four older siblings were placed together in the home of Olivia and Kevin D., and they were adjusting well to their new placement. The children continued to have monitored visits with mother on Wednesdays, and, on Saturday mornings, they had sibling visits. The sibling visits went well, and the children enjoyed seeing each other.

The foster family agency social worker reported that the children enjoyed visiting mother, but mother “[d]id not interact with the children at all.” Throughout the visits, the children would either play on their iPods or run around the play area, while mother would sit and glance at her telephone. Mother was not affectionate with the children and would not give them any positive feedback. On several occasions, the foster family agency social worker encouraged mother to engage her daughters or to bring board games to the visits, but mother would “snap and

... give her an attitude.” Mother also made negative remarks about the foster parents to the children.

Mikey, Juliana, Julissa, and Jacob continued to live with Mr. and Mrs. F. They refused to have direct contact with mother. Despite DCFS efforts to encourage these four children to visit with mother, the children would refuse to leave their placement; they would also become aggressive and have tantrums.

Anthony continued to visit mother. During the visits, mother would not engage the child or show any emotion towards him. Mother would stand and watch the child. She brought him snacks, but she would remain seated on the couch and stare at him while he ate the snacks and played on his own.

On July 20, 2017, Destinee told the foster family agency social worker that she no longer wanted to visit mother. She said that mother was not trying her best to get her and her siblings back, and she was upset with mother.

Mr. and Mrs. F., the foster parents for Mikey, Juliana, Julissa, and Jacob, and Mrs. B. and Mrs. F., the foster parents for Anthony, expressed that they wished to provide the children with a permanent home through adoption.

Last Minute Information for the Court (Aug. 17, 2017)

On August 4, 2017, Mikey was hospitalized as a result of aggressive behavior towards his foster family. Following his discharge from the hospital, DCFS placed him in a different foster home.

Interim Review Report (Oct. 12, 2017)

On September 1, 2017, DCFS learned that mother was pregnant with her eleventh child.³

On September 12, 2017, Mikey told the social worker that he wanted to return to Mr. and Mrs. F. The social worker explained that the goal was for his behavior to stabilize before he could return to the F.'s home. Mikey told the social worker that he was afraid that since he was in a new home, mother was going to visit him or know his placement.

On September 13, 2017, Juliana and Julissa informed the social worker that they identified Mr. and Mrs. F. as their parents. Jacob smiled and nodded his head when the social worker asked how he felt about his placement with Mr. and Mrs. F.

18-month Review Hearing (Oct. 12, 2017)

The juvenile court terminated family reunification services for mother.

Section 366.26 Report (Feb. 7, 2018)

The four older siblings expressed that they did not want to be adopted, but they wanted to remain in their current foster home. Destinee and Maribel refused to visit mother, stating that there was no point “especially when they know that she did not try hard enough to get them back.” Serenia and Lisvet continued to visit mother “because [she] makes promise[s] to them that she is bringing them stuff and also because she buys them fast food.”

Mikey remained removed from Mr. and Mrs. F.'s foster home, but they remained committed to adopting him; they had

³ In December 2017, mother gave birth to Miliana A. She is not a subject of this appeal.

maintained visits with him in an effort to have him return to their home. Mikey continued to identify Mr. and Mrs. F. as his parents. Juliana, Julissa, and Jacob remained in Mr. and Mrs. F.'s home and wished to be adopted by them.

Anthony also remained in his prospective adoptive parents' home, where he had lived since April 2016. He continued to have weekly visits with mother. At the beginning of the visits, he had difficulty warming up to her and exhibited resistance to entering the visitation room. He did not engage with mother during the visits and would play on his own.

All of the children continued to have sibling visits once a week. The foster parents communicated and planned the visits among themselves, and they agreed to continue facilitating the visits after adoption of the children. The foster parents reported that Destinee, Serenia, and Maribel were refusing to get up in the mornings to visit their siblings; only Lisvet consistently visited her younger siblings.

Section 366.26 Hearing (May 1, 2018)

On May 1, 2018, the section 366.26 hearing commenced. The four older siblings' trial counsel requested sibling visits. The hearing was continued, at which time the juvenile court indicated that it would address the issue of sibling visits.

The older siblings trial counsel asked that the five younger siblings be present at the continued hearing. The five younger children's trial counsel asked that the juvenile court find them unavailable to testify. The juvenile court requested information from their therapists and placed the children on call for the hearing. It then ordered the four older siblings to leave the courtroom.

The juvenile court then paused the proceedings and stated: “I couldn’t help but hear the outburst out in the attorney waiting room in between the court and the back.” It recalled the matter and requested to hear from the four older siblings because they were very upset. Serenia stated: “I’m wondering why is it up to her [the five younger siblings’ trial counsel] for me not to see them today?” The juvenile court answered that it was up to the court whether the siblings had a visit, not trial counsel. The juvenile court then stated: “Okay. Everybody is upset. Everybody is on edge. I had two children leave the courtroom screaming and crying.”

Destinee asked the juvenile court whether the five younger children were being adopted that day and stated: “Well, the foster parents are controlling the kids. Just saying.” The juvenile court indicated that it was not terminating parental rights that day; the only issue was whether there would be sibling visits.

The juvenile court then discussed Mikey. When the five younger children’s trial counsel indicated that he was being returned to shelter care, the juvenile court responded: “I cannot help but notice [that Mikey’s] in shock, and he’s crying.” It then ordered Mikey to be placed back in the home of Mr. and Mrs. F.

The juvenile court ordered the social worker to provide Title XX reports from February to May 2018.

The matter was set for a contested hearing. The five younger siblings were placed on call.

Title XX Reports

September 16, 2017

During a weekly sibling visit on September 16, 2017, the children were happy to see each other and played without any

problems. The children engaged in positive talks and appeared to enjoy each other's company.

February 26, 2018

Mikey's new foster mother reported that when Mikey returned from visits with Mr. and Mrs. F., he would go to his room and cry. She did not understand why Mikey was "so in love with the family." She explained that "she ha[d] been a caregiver for a very long time and in her experience all children always talk about their mother. Mikey never wants to talk about his mother and when she . . . asks him about her, he tells her that he does not want to live with her because she is mean. The caregiver stated that Mikey only talks about going back to live with Mr. and Mrs. [F.] whom he refers to as mom and dad and his younger siblings."

Afterward, the social worker interviewed Mikey, who reported that he saw the four older siblings in court. When asked if he wanted to visit with them, Mikey responded: "[N]o, because they are mean[.] [T]hey told me that [Mr. and Mrs. F.] are mean [and] they don't like them." Mikey also told the social worker that he cried after his visits with the F.'s and his other siblings. He snapped his fingers and stated, "I miss them this fast."

April 4, 2018

The social worker spoke with Mikey, Julissa, Juliana, and Jacob, and asked them about visiting the four older siblings. Mikey responded, "[T]hey are mean to me," and said that he did not want to see them. When the social worker told Mikey that they would be at the visit, he said, "OK, maybe." Juliana also said that she only wanted to visit with the "young ones," "not the older ones." Julissa initially stated that she did not want to visit the four older siblings, but when the social worker asked her

if she would attend the visit if Mrs. F. transported her, she said, “[Y]es.”

May 3, 2018

Mother told the social worker that she believed that Mrs. F. had told the children not to visit her. Mother reported that at the May 1, 2018, hearing, Maribel had sat next to Jacob and told him that she missed him. Jacob was sitting next to Mrs. F. and he did not respond to Maribel until Mrs. F. turned away, and then, in a low voice, he said that he missed her too.

May 9, 2018

Mrs. F. reported to the social worker that when she pulled into the parking lot of the DCFS office for a visit with mother, the children refused to get out of the car. Juliana moved to the backseat and buckled the seatbelt because she did not want anyone to “grab” her. Jacob began to kick the seat in front him, yelling “No” over and over again. Julissa slid down her car seat and had tears streaming down her face. The social worker and her supervisor spoke with the children and attempted to convince them to participate in the visit, but they refused to get out of the car.

Motion to declare the five younger children unavailable as witnesses (May 11, 2018)

Trial counsel for the five younger siblings filed a motion to have the children declared unavailable to testify as witnesses at the section 366.26 hearing and a request for a finding of admissibility of the children’s statements. Attached to the motion was a letter from Juliana, Julissa, and Jacob’s therapist. Juliana had told the therapist that at the May 1, 2018, hearing, when she saw father smile and nod at her, she “felt intense fear and started crying.” Mrs. F. reported that Juliana had started

crying and screaming, curled up into a ball, started scratching her face, and was unable to be calmed down. Julissa reported that when she saw Juliana upset, she and Jacob became afraid. The three children were happy not to be in court. The therapist concluded: “While it would be difficult to assert that testifying court would be detrimental to the children’s well-being or mental health, based on their and foster parents’ reports, it is clear that the experience of being in court without the caregivers they consider their parents, the [F.’s], and in the presence of their biological parents, could cause some . . . extreme emotional distress for the children, especially Juliana, who may have more memories of her experiences with her biological parents.”

Also attached to the motion was a May 8, 2018, letter from Anthony’s therapist, in which the therapist reported that Anthony was guarded with strangers and acted out when scared. The therapist stated: “[Anthony’s] behaviors often increase just before and just after visits with his biological mom and are better at home than they are at school. . . . When a new social worker came to the home who looked vaguely like [mother], [Anthony] became hypervigilant and anxious and soiled his pants. [Anthony] later shared with [the therapist] that he thought ‘visit mom’ had found him and that he was being removed from the home.” The therapist opined that testifying would confuse and scare him, retraumatize him, and cause him to regress. The therapist continued: “If the court would like to ask [Anthony] direct questions about placement, it would be in the child’s best interest to be approached in the home by a social worker after some rapport has been established.”

Last Minute Information for the Court (June 29, 2018)

On May 20, 2018, all nine children had a sibling visit at a park. The social worker asked the foster parents to leave. The foster parent for the four older siblings left. Anthony's foster mother attempted to leave, but Anthony hugged her and would not let her go. The four older siblings began to talk to Anthony, and, after a few minutes, he began to play with them. Juliana, Julissa, and Jacob refused to stay without their foster mother (Mrs. F.). The social worker asked Mrs. F. to stay with the children in the car and wait in the parking lot to see if they would change their mind and stay for the visit. Juliana, Julissa, and Jacob followed Mrs. F. to the car. During the visit, they would run from the car to a park bench and back to the car, as a game. Toward the end of the visit, Juliana, Julissa, and Jacob began to play with their other siblings. Mikey stayed in Mrs. F.'s car and did not participate in the visit.

The four older siblings were appropriate during the visit, and, when the visit ended, the girls hugged their siblings and told them that they loved them.

Four Older Siblings' Section 388 Petition (June 27, 2018)

On June 27, 2018, the four older siblings filed a section 388 petition, asking to participate in the section 366.26 hearing. Their attorney stated: "They will present evidence concerning the strong sibling bond between their younger siblings and themselves and the substantial interference with the sibling relationship that [termination of parental rights] and adoptions would incur."

At the hearing on June 29, 2018, the juvenile court granted the four older siblings' section 388 petition. In so doing, the juvenile court remarked that it was "only allowing them to testify

in expressing their objections and attempting to establish what they believe is the substantial interference of the termination of parental rights.”

Contested Section 366.26 Hearing (June 27, 2018); Mother’s Request that the Four of the Five Younger Siblings Testify

Thereafter, mother requested that Mikey, Juliana, Julissa, and Jacob testify at the contested section 366.26 hearing. She argued that the parental relationship exception to the termination of parental rights existed in the case, and she wished to have these four young children testify as to their relationship with mother and how they felt about being adopted.

The juvenile court stated: “I’m not calling these children based on the evidence before me.” It continued: “I’m going to hear testimony from whoever wants to say something. I will make a determination after that testimony and after that evidence whether or not it is legally relevant to hear from [the younger children]. And if it isn’t, then we proceed [with the section 366.26 hearing]. If it is, then I will go to [the] motion [to declare the children unavailable to testify].”

Mother then testified. She reported that she visited Anthony once a week for four hours at the DCFS office. She would bring snacks for him or cook for him. He called her “mommy.” They would read books and play with Legos and other toys. And at the end of the visits, he would get tired.

The last time mother visited with Mikey, Juliana, Julissa, and Jacob was over a year ago. She testified that the social worker had told her that the children did not want to visit her, and she did not know why “because before [she] had consistent visits with them I don’t know why all of a sudden overnight they just changed all of a sudden, and that made me concerned.”

She still attempted to have visits with the children. She opined that Mr. and Mrs. F. put “stuff in my kids[] heads because before she only had my son Jacob at the time. She was always consistent to my visits every week. I would always see[] him. He never missed no visits. . . . [¶] Then when she got my other three kids, I never seen them again.” All the children called her “mom.” Mother did not believe the children wished to be adopted. She opined that they wanted to return to her care.

Regarding the children’s relationships with one another, mother stated: “My big ones have shared with me. They cry on my visits talking about [the five younger siblings]; they miss them; that if [they get adopted], they’re never going to see them again; they’re going to be in pain the rest of their lives; they’re not going to know who they are anymore if that was to happen.” Mother stated that Destinee had told her that that was how the four older siblings felt.

The matter was continued.

Continued Section 366.26 Hearing (July 2, 2018)

Destinee’s Testimony

Destinee testified that she did not want her younger siblings to be adopted because she loved them and wanted to live with them. When they all lived together in mother’s home, Destinee would eat breakfast and dinner with her younger siblings, help them put on clothes, and assist them with getting ready for bed. Destinee believed that Mr. and Mrs. F. had persuaded Mikey not to want to return home because she and Mikey had lived together in placement and, at that time, he wanted to visit mother and would draw pictures for her.

She further stated that the siblings used to have visits once a month, but then the younger siblings changed, and “[t]hey just

stay in the car with the foster mom.” Before that, the younger siblings would play and have fun during the visits. Since the prior month, the visits were not good. She explained: “[Mikey, Juliana, Julissa, and Jacob] just kept on coming in and out. Like, they wanted to see us but they just went back in the car. And then, like, Jacob—I think it was two weeks ago—he got mad and he said that he wanted to leave. And then, like, last month Mikey said that when is it time to leave. I don’t want to see them. He just said that he didn’t want to see us no more.” She had told her younger siblings that she missed and loved them, and they responded that they missed and loved her too.

On cross-examination, Destinee stated that there had been a time when the children lived with Mr. and Mrs. F. that they had consistent sibling visits, and Mikey, Juliana, Julissa, and Jacob wanted to see them. She opined that if the five younger siblings were adopted, they would not continue to see them. When asked why, Destinee replied: “Well, they obviously don’t want to see us now which—do you think they don’t want to see us when they get adopted[?]”

Serenia’s Testimony

Serenia testified that when all of the children lived together, she would wake her younger siblings and help them get dressed in the mornings. She would help them with homework, give them snacks, and put them in time outs when they did not behave. After they were all removed from mother’s care, they would visit each other once a month “[u]ntil they went with [Mrs. F.]” At the last sibling visit, Serenia tried to talk to her younger siblings, and they “would say leave me alone,” and would run away. When the visits were good, the children would all play together and, at times, the younger children would cry at the end

of the visits. She concluded: “They wanted to live with us but not anymore.” She did not want the five younger siblings to be adopted.

Maribel’s Testimony

Maribel also testified that she did not want the five younger siblings to be adopted because then she would not see them anymore. When they all lived together in mother’s home, Maribel helped give them breakfast, assisted them with homework, and got them ready for bed. She further stated that after their removal from mother’s care, the visits with the younger siblings went well until Mikey, Julissa, Juliana, and Jacob moved in with Mrs. F.

Juvenile Court’s Comments and Ruling

Following Maribel’s testimony, the juvenile court stated: “We’re done. We’re done. She’s finished testifying. I’m not doing this anymore to these girls. I know their position. I know their position through their tears and through their pain that they don’t want their younger siblings to be adopted and that they believe that they have a strong sibling bond. That’s all we’re going to get from them.” The juvenile court continued: “Before we get to the younger siblings there’s somebody I want to hear from. I’m using my authority as a bench officer in [a] dependency case. I’d like to hear from the foster mother.”

The matter was continued to July 11, 2018.

Continued Section 366.26 Hearing (July 11, 2018)

Mrs. F.’s Testimony

The juvenile court asked Mrs. F. why Mikey had changed his name. She explained that he did not like that he had the same name as father and chose to change it. She denied that she put the children in timeouts if they did not call her “mom.” The

children had begun to call her and Mr. F. “mom and dad” over a period of time. Mr. and Mrs. F. had had 17 foster children in their home, and of the 17 children, six had been returned to their parents’ care. Mrs. F. stated that she and her husband wished to adopt Mikey, Julissa, Juliana, and Jacob. When the juvenile court asked “Why these children,” Mrs. F. answered: “We have decided from the very beginning that we would be there for any kids that come into our home for as long as they need us. And so with these kids we love them, and so we’re ready to adopt them.” The juvenile court then asked Mrs. F. whether she would continue to have sibling visits if the court terminated parental rights, Mrs. F. replied “absolutely” with respect to Anthony; with respect to the four older siblings, Mrs. F. stated: “If our kids are ready, when they’re ready.” At no time did Mrs. F. refuse to take the children to visits because of mother or the four older siblings.

Mrs. F. then testified that she and her husband had adopted a child, and he continued to have contact with his biological mother and baby brother after the adoption. She explained: “[W]e feel like it’s important for him to know where he came from and that part of his history.”

Juvenile Court’s Ruling

After Mrs. F.’s testimony concluded, the juvenile court stated: “Well, I’m going to make my ruling and here it goes. I’m not even going to get to the issue of unavailability at first glance. [¶] These children are ten, eight, seven, and six. Their consent is not relevant. They are all under the age of twelve.” It found that the testimony of the young children would “not assist the court in making the determination whether or not it’s in their best interest and/or whether or not it would be appropriate to terminate the parental rights.” The juvenile court continued: “I

know [the four older siblings] are very upset because they believe their siblings are—don't want to be adopted. Nothing they have said in any statement in any report indicates that, and it's not relevant. They're under the age of 12. That's my determination."

In so ruling, the juvenile court noted that the only parties claiming that there was a strong bond were the four older siblings.

The juvenile court continued: "[S]o then I look at the trauma that would be imposed upon these children to have to testify either in chambers or out of chambers and look at whether or not the trauma that . . . would be caused by these children testifying balanced by the information that the court could possibly glean from these children and balancing that in making the decision is not sufficient information that the court would need to balance out the undue trauma that these children that, once again, are six, seven, eight, and ten would have to go through to testify."

The matter was continued to July 17, 2018.

Continued Section 366.26 Hearing (July 17, 2018)

The five younger siblings' trial counsel reported that the children were "very clear that they wish[ed] to be adopted. They know that the legal relationship will be severed." The juvenile court found that the children were likely to be adopted. With regard to the parental relationship exception to the termination of parental rights, the juvenile court found that mother had monitored visits and had not provided the day-to-day care of the children since they had been detained from her care.

Regarding the sibling relationship exception, the juvenile court found that all of the siblings had had some great visits, but "even if all the visits had been great, would that have been

enough to overcome the preference for adoption? I think not in this particular case.” “In this particular case I have found [Mikey], Juliana, Julissa, Jacob and Anthony are home, and they have been home for quite some time.”

Parental rights were terminated.

Appeals

These timely appeals ensued.

DISCUSSION

Mother contends that the juvenile court erred when it declined to hear testimony from four of the five younger children (Mikey, Juliana, Julissa, and Jacob) at the section 366.26 hearing. Father joins in mother’s argument. The four older siblings also join in mother’s argument.

I. Applicable law and standard of review

A dependent child shall not be present at the section 366.26 hearing unless the child or his or her counsel requests or the court orders the child to be present. (§ 366.26, subd. (h)(2).) As a result, the child’s testimony is usually not directly presented to the court, although the court may allow the parent to call the child as a witness. (*In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1085.) However, “the juvenile court is not required to take in-court or in-chambers testimony from the child, even when the parents request that such testimony be taken.” (*In re Juan H.* (1992) 11 Cal.App.4th 169, 172.) For example, the court will not order a child to testify if doing so will cause the child substantial emotional trauma. (*In re Jennifer J., supra*, at p. 1089.) The court may also exclude a child’s testimony if it is irrelevant to the issues before the court. (Evid. Code, § 350.) To be relevant, the testimony must prove or disprove any disputed fact of consequence in the action and should not be cumulative. (*People*

v. Scheid (1997) 16 Cal.4th 1, 13; see also *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1068.)

Evidence as to a child's wishes may be presented to the court by reports prepared for the hearing, letters, telephone calls, or electronic recordings. (*In re Diana G.* (1992) 10 Cal.App.4th 1468, 1480.)

Moreover, "[i]t is clear that a direct statement from the child is not required where this is contrary to the child's best interest." (*In re Amber M.* (2002) 103 Cal.App.4th 681, 687.) "The juvenile court judge in a proper case may refuse to require the attendance and testimony of the child who is the subject of the litigation. This power derives, we believe, from a recognition of the overriding objective of the dependency hearing—to preserve and promote the best interests of the child. It would be a perversion of the procedure to impose upon it a requirement that the child's testimony always be presented, regardless of the trauma resulting to the child therefrom, and regardless of the necessity of such testimony in the resolution of the issues before the court. The refusal of the court to issue process requiring the attendance and testimony of the child should, assuredly, be a decision made only after a careful weighing of the interests involved. . . . '[F]undamental rights are implicated in dependency proceedings, and they cannot be abrogated with impunity.' Where, however, the child's desires and wishes can be directly presented without live testimony, where the issues to be resolved would not be materially affected by the child's testimony, and where it is shown that the child would be psychologically damaged by being required to testify, we hold the juvenile court judge has the power to exclude such testimony." (*In re*

Jennifer J., *supra*, 8 Cal.App.4th at p. 1089, italics & fn. omitted; see also *In re Juan H.*, *supra*, 11 Cal.App.4th at pp. 172–173.)

We review the juvenile court’s evidentiary decision for abuse of discretion. (*In re Leo M.* (1993) 19 Cal.App.4th 1583, 1594; see also *In re Daniela G.* (2018) 23 Cal.App.5th 1083, 1090 [exclusion of a child’s testimony to avoid psychological harm to the child is reviewed for abuse of discretion].) “To the extent [appellants] challenge[] the factual findings underlying the juvenile court’s ruling, our review is for substantial evidence, and to the extent [their] claims raise questions of law, our review is de novo. [Citation.]” (*In re Daniela G.*, *supra*, at p. 1090.)

II. *The juvenile court did not err*

Applying these legal principles, we conclude that the juvenile court did not err in refusing mother’s request that four of the five younger siblings testify at the section 366.26 hearing. After all, the juvenile court admitted numerous DCFS reports into evidence; those reports provided evidence of the children’s emotional states and desires, including relating to the four older siblings, their biological parents, and their foster parents. Moreover, over the course of the multi-day hearing, the juvenile court heard testimony from mother, Destinee, Serenia, Maribel, and Mrs. F. regarding the younger children’s emotions and desires. And, we cannot ignore the juvenile court’s express finding, based upon admitted evidence and its own observations, that it would not have been in the younger siblings’ best interests to testify. Accordingly, we conclude that the juvenile court acted well within its discretion in denying mother’s request that these young children testify. (*In re Jennifer J.*, *supra*, 8 Cal.App.4th at p. 1089 [“Where. . . the child’s desires and wishes can be directly presented without live testimony, where the issues to be resolved

would not be materially affected by the child's testimony, and where it is shown that the child would be psychologically damaged by being required to testify, . . . the juvenile court judge has the power to exclude such testimony"].)

In urging reversal, mother asserts that the juvenile court's refusal to permit the younger children to testify denied her due process of law. We disagree.

"Of course a parent has a right to 'due process' at the hearing under section 366.26 which results in the actual termination of parental rights. This requires, in particular, a 'meaningful opportunity to cross-examine and controvert the contents of the report.' [Citations.] But due process is not synonymous with full-fledged cross-examination rights. [Citation.] Due process is a flexible concept which depends on the circumstances and a balancing of various factors. [Citation.]" (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 816–817.) In other words, "[d]ue process requires a balance. [Citation.] The state's strong interest in prompt and efficient trials permits the nonarbitrary exclusion of evidence." (*Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1146.) It follows that the due process does not require the juvenile court to permit the parents to introduce irrelevant or cumulative evidence. (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.)

Here, mother's due process rights were not violated when the juvenile court denied her request that the younger siblings testify at the section 366.26 hearing. In deciding whether to terminate parental rights, the juvenile court relied on reports from DCFS and testimony from mother, Destinee, Serenia, Maribel, and Mrs. F.; appellants were given the opportunity to cross-examine and challenge all of this evidence. Under these

circumstances, there was no need for the younger children to testify.

Mother further argues that the juvenile court erred because it misapplied the law. According to mother, even though Mikey, Juliana, Julissa, and Jacob were under the age of 12 at the time of the section 366.26 hearing, the juvenile court was still required to consider their wishes regarding adoption.

We agree with mother that the younger children's wishes were relevant. But, the juvenile court did not err in not requiring that they testify. The juvenile court was able to ascertain their wishes through evidence other than their testimony, such as statements that they made that were recorded in the DCFS reports, and through the testimony of key witnesses, including Mrs. F. Based on that evidence, it does not appear that the children would have testified that they did not want to be adopted.

In addition, mother argues that the younger children's testimony was crucial for the juvenile court to ascertain the strength of the sibling bond from the younger siblings' perspective. Appellants correctly point out that "[t]he sibling bond exception is evaluated from the perspective of the child who is being considered for adoption, not the perspective of that child's siblings. [Citation.]" (*In re D.O.* (2016) 247 Cal.App.4th 166, 174.) But that could be done here with evidence other than live testimony from the younger children. The social worker's reports were replete with statements by the children regarding their feelings for the four older siblings. And their feelings were confirmed by their trial counsel, who represented that the children wanted to be adopted.

Mother cites *In re Naomi P.* (2005) 132 Cal.App.4th 808 for the proposition that “[l]ive testimony often is critical for the court to ascertain the sibling relationship.” While that may be true, it is not the lone factor. Rather, as set forth above, the juvenile court may consider any admissible, relevant evidence, and may exclude irrelevant evidence. That is what it did here. The juvenile court considered DCFS reports, testimony from other witnesses, and its own observations of the children in the court proceedings.

Moreover, unlike the facts in *In re Naomi P.*, it does not appear that had the five younger siblings testified, they would have testified that they did not want to be adopted because they did not want their legal relationship with their four older siblings severed. After all, as set forth in the DCFS reports, the younger siblings refused to have visits with their four older siblings. They described their older sisters as mean; they were afraid of them because the four older siblings had threatened them.

Likewise, *In re Amy M.* (1991) 232 Cal.App.3d 849 is readily distinguishable. In that case, the Court of Appeal determined that a child should have been compelled to testify, partly because “there was no substitute for his testimony that could have been admitted into evidence. Neither was there any report containing [the child’s] statements which could have substituted for his testimony.” (*In re Amy M.*, *supra*, at p. 865.) In contrast, as set forth above, there was a substitute for the testimony of the younger siblings—namely in the DCFS reports that were admitted into evidence.

In light of our conclusion that the juvenile court did not err, we need not address appellants' contention that the alleged error was prejudicial as the younger children would have offered testimony in support of their claims that the sibling exception to adoption applied.

DISPOSITION

The juvenile court's order terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT